

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 991 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MADHUSUDAN B CHANDARANA

Versus

STATE OF GUJ

Appearance:

1. Criminal Appeal No. 991 of 1994
MS BANNA S DUTTA for Petitioner No. 1
Mr.K.P.Rawal, APP for Respondent
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CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE M.C.PATEL

Date of decision: 22/04/2003

1. Appellant, original accused, in this appeal filed under Section 374 of the Code of Criminal Procedure ('Code' for short), has challenged his conviction under Section 302 of the Indian Penal Code ('IPC' for short) and sentence imposed on him to undergo R.I. for life and fine of Rs.1000 in default R.I. for six months, recorded by the learned Additional Sessions Judge, Gondal, in Sessions Case No.237 of 1993, by judgment and order dated August 16, 1994.

2. Briefly stated, the prosecution case is as under:

Complainant, P.W.9, Jagdishbhai Hargovindbhai, was a resident of town Dhoraji. The brother of the complainant, Dilip, (since deceased) was carrying on the business of selling 'farshan' (savories) at village Gariyadhar. On the day of the incident, i.e. May 10, 1993, deceased Dilip along with his other friends, namely, Rameshbhai Jamnadas, Devendra Chunilal and Kanaksinh Darbar, had gone to town Dhoraji to attend the marriage ceremony of his friend, Dhirubhai Baldha. When the deceased, along with his friends, was proceeding in the direction of the house of Dhirubhai, the appellant had come on a bi-cycle; got down from the bi-cycle; taken out a knife which was concealed in his pant, and inflicted several blows with the knife on the deceased. When the friends who were accompanying the deceased had tried to intervene, the appellant had given threats that they would be dealt with severe knife blows. The appellant had become so furious that he had inflicted several knife blows on the vital parts of the body of the deceased, as a result, the deceased had fallen down in bleeding condition. The deceased was removed in an auto-rickshaw to the Government Hospital at Dhoraji, where the Doctor, who had examined him, had given primary treatment and had advised to take the deceased to Junagadh Civil Hospital. Accordingly, the deceased was removed in an ambulance to Junagadh Civil Hospital where the Doctor on duty had declared the deceased dead. The complainant, who happens to be the elder brother of the deceased, had filed First Information Report before PSI, Pathan. The said First Information Report was sent to Dhoraji Police Station where it was registered at CR No.I-110 of 1993. The inquest of the dead body of the deceased was held and the dead body was sent to the post-mortem to the Civil Hospital, Junagadh, where P.W.4, Dr. Vasavda, had performed autopsy. The investigation of the above crime was carried on, at the initial stage, by PSI, R.M. Pathan, who had drawn the panchanama of

scene of offence and had recovered the clothes put on by the deceased, other witnesses who were present at the scene of incident and the appellant. Ultimately, the investigation was concluded by P.W.18, Circle Police Inspector, M.B. Amrutiya. P.W.18, Circle Police Inspector, M.B. Amrutiya, had recorded statements of witnesses and had sent the incriminating articles collected during investigation to the Forensic Science Laboratory ('FSL' for short). The muddamal knife used in commission of offence was also recovered under a panchanama and sent to the FSL for analysis. On receipt of the report of the FSL, medical certificates and post-mortem notes, P.W.18, Circle Police Inspector, M.B. Amrutiya, had filed chargesheet against the appellant for the offence under Section 302 of the IPC and Section 135 of the Bombay Police Act in the Court of the learned Judicial Magistrate, First Class, Dhoraji, which was registered as Criminal Case No.618 of 1993. As the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions Judge, the learned Judicial Magistrate, First Class, committed the case to the Court of Sessions, Rajkot, where it came to be numbered as Sessions Case No.237 of 1993.

3. Charge was framed against the appellant for the offences punishable under Section 302 read with Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant wherein he pleaded not guilty and claimed to be tried. The prosecution, in order to prove the charges framed against the appellant, examined:

- (1) P.W.1. Jayantilal Bavanjibhai, Exh.7;
- (2) PW 2. Narendrabhai Lavjibhai Kalariya, Exh.10 ;
- (3) PW 3. Kishorkumar Kanjibhai, Exh.16;
- (4) PW 4. Dr.Prabhakar Vaikunthray Vasavda, Exh.20 ;
- (5) PW 5. Ramesh Rudabhai, Exh.26 ;
- (6) PW 6. Anilbhai Samaldas, Exh.28 ;
- (7) PW 7. Dhirajlal Govindji Baldha, Exh.31 ;
- (8) PW 8. Nathalal Popatlal, Exh.35 ;
- (9) PW 9. Jagdish Hargovindbhai, Exh.39 ;
- (10) PW 10.Rameshkumar Jamnadas, Exh.41 ;
- (11) PW 11.Virendraray Bhupatray Bantviya, Exh.42 ;
- (12) PW 12.Devendra Chunilal Bakhai, Exh.43;
- (13) PW 13.Govindbhai Polabhai, Exh.46 ;
- (14) PW 14.Mohanbhai Dosumal, Exh.47 ;
- (15) PW 15.Rahiskhan Mahamadkhan Pathan, Exh.48 ;
- (16) PW 16.Kanubhai Hamirbhai, Exh.52 ;
- (17) PW 17. Raghuba Tejubha Jadeja, Exh.54 ; and
- (18) PW 18. Mansukhlal Bhagwanji Amrutiya,Exh.58.

The prosecution also produced documentary evidence such as map of place of incident Exh.8, injury certificate of

the appellant Exh.12, certificate of blood group of the appellant Exh.13, injury certificate of the deceased Exh.17, post-mortem notes Exh.21, certificate of cause of death Exh.23, inquest panchanama Exh.24, panchanama of seizure of cloth of deceased Exh.25, panchanama of place of incident, Exh.29, report of FSL Exh.61, and report of Serologist Exh.62 to prove the charge against the appellant.

4. After the evidence of the prosecution was over, the appellant was questioned generally and his statement came to be recorded under Section 313 of the Code. The defence of the appellant was of general denial.

5. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence and the arguments advanced by the learned Additional Public Prosecutor and the learned advocate for the appellant, held that deceased, Dilip Hargovindbhai, had died homicidal death on May 10, 1993. The learned Additional Sessions Judge, further, held that it was proved beyond doubt that the appellant had inflicted successive blows with muddamal knife on the vital parts of the body of the deceased as a result of which he had succumbed to his death. On the basis of the abovereferred to conclusion, the learned Additional Sessions Judge, by impugned judgment and order, convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo R.I. for life and fine of Rs.1000 in default R.I. for six months, which has given rise to filing of the present appeal by the appellants.

6. Learned counsel Ms. Banna S. Dutta, appearing for the appellant and learned APP, Mr. K.P. Rawal, have taken us through the entire record and proceedings of the Sessions Case. We have scanned through the entire evidence and reappreciated the oral as well as documentary evidence.

7. Learned counsel for the appellant has submitted that, as per the post-mortem report Exh.21, as many as 13 external injuries were found on the body of the deceased which indicated that the appellant alone could not have inflicted those injuries and the prosecution has tried to suppress the genesis of occurrence and, therefore, benefit of doubt should be given to the appellant. It is next submitted by the learned counsel for the appellant that the muddamal knife had sharpened on one side only and the injuries, as noted in the post-mortem notes, had indicated that they were possible by a sharp-cutting instrument having two edges and, therefore, the injuries,

which were noted in the post-mortem notes, could not have been caused by the muddamal knife. It is next submitted by the learned counsel for the appellant that the appellant himself had sustained injuries during the said incident and those injuries were not explained by the prosecution which had raised doubts about genesis of occurrence and, therefore, the appellant should be acquitted by extending reasonable benefit of doubt. In the alternative, it was submitted by the learned counsel for the appellant that the incident had happened as a result of grave and sudden provocation as the deceased had engaged with the sister of the appellant and he had broken the engagement and, therefore, the appellant having been enraged had inflicted blows with knife and, therefore, the sentence be suitably modified and the appellant may be convicted for the offence under Part 1 or Part 2 of Section 304 of the IPC and the appeal be allowed accordingly.

8. We have heard learned APP, Mr. K.P. Rawal, for the respondent-State.

9. Deceased, Dilip, was first examined by P.W.3 Dr. Kishorekumar Kanjibhai at Dhoraji Government Hospital. He had given primary treatment to the deceased around 7.20 p.m. on May 10, 1993. P.W.3, Dr. Kishorekumar Kanjibhai, had examined the deceased and he had given the description of the external injuries sustained by the deceased, as under:

"17. External injuries

(1) Incised wound 1" x 1/4" x M. deep oblique on left side cheek

(2) Incised wound 1" x 1/2" x M. deep elliptical shape, Trans. in direction on left side chest on Mid-axillary zone parallel to left Nipple

(3) Incised wound 2" x 1/2" x cavity deep elliptical shape on left side front of chest 3" below the left Nipple Trans. in direction

(4) Incised wound 3" x 1/2" x cavity deep elliptical shape Trans. in direction on left side chest just below the injury no.3

(5) Incised wound 1" x 1/2" x M. deep elliptical shape on left side Abdomen Trans. in direction Near umbilicus

(6) Incised wound 1" x 1/4" x M. deep oblique on left side upper arm

(7) Incised wound 2 1/2" x 1/2" x elliptical shape elongated on Rt. side chest M. deep

(8) Incised wound 2" x 1/2" x cavity deep Trans. in direction on Rt. side Back & Chest just on Post axillary wall - between 10th & 11th Rib

- (9) Incised wound 2" x 1/2" x M. deep on left side Elbow
- (10) Abrasion 1" x 1/2" x Elongated on left side front of chest near injury no.3
- (11) Incised wound 1" x 1/2" x M. deep elongated on Rt. side forearm Mid 1/3 part
- (12) Incised wound 1" x 1/2" x M. deep oblique on Rt. side forearm post aspect (Dorsal)
- (13) Incised wound encircling 1" in length M. deep on Rt. thumb"

According to P.W.3, Dr. Kishorekumar, the injury Nos.3,4 and 8 were inflicted on the vital parts of the body of the deceased which were sufficient in the ordinary course of nature to cause death of the deceased. He also deposed that the injuries which were noted in the certificate Exh.17 were possible by infliction of muddamal knife. As the condition of the deceased was very serious, he was referred to Junagadh Civil Hospital by P.W.3, Dr. Kishorekumar. The deceased was brought to Junagadh Civil Hospital around 11.10 p.m. on the same day where he was declared dead by the Doctor on duty at Junagadh Civil Hospital. The autopsy of the deceased was performed by P.W.4, Dr. P.V. Vasavda, at Junagadh Civil Hospital. The post-mortem notes were produced by P.W.4, Dr. Vasavda, at Exh.21. According to the opinion of P.W.4, Dr. Vasavda, injuries Nos.3,4 and 8 were sufficient in the ordinary course of nature to cause death of the deceased and the said injuries noted in the post-mortem notes were possible by blows given by muddamal knife. The oral evidence of P.W.3, Dr. Kishorekumar, and P.W.4, Dr. Vasavda, corroborated by injury certificate of the deceased Exh.17 and the post-mortem notes Exh.21, in our view, had established that the deceased had died homicidal death. The finding of the learned Additional Sessions Judge to that effect deserves to be confirmed.

10. Evidence of complainant, P.W.9, Jagdishbhai Hargovindbhai, had proved that deceased, Dilip, was engaged with the sister of the appellant and the said engagement had lasted for eleven months. The evidence of P.W.9, Jagdishbhai Hargovindbhai, shows that the sister of the appellant had insisted that the deceased, after the marriage, should stay separately from the joint family which the deceased did not like. Because of this difference of opinion, the engagement between the deceased and the sister of the appellant had come to an end. Because of this breaking of engagement between the deceased and the sister of the appellant, the appellant had serious grudge against the deceased. On May 10,

1993, when the deceased accompanied by P.W.10, Rameshkumar Jamnadas and P.W.12, Devendra Chunilal and other friends had come to town Dhoraji to attend the marriage ceremony of his friend, Dhirubhai, the appellant had got enraged on seeing the deceased. The appellant was waiting for an opportunity to take revenge on the deceased as he had broken the engagement with his sister. The appellant had got down from the bi-cycle, had taken out the muddamal knife from his pant, and had inflicted successive blows with the muddamal knife on the vital parts of the body of the deceased. The evidence of P.W.10, Ramesh Jamnadas, P.W.11, Virendraray Bhupatray and P.W.12, Devendra Chunilal, had proved beyond doubt that the appellant in order to take revenge on the deceased had given successive blows with the muddamal knife on the vital parts of the body of the deceased as a result of which he had succumbed to the injuries. The complainant and the eye-witnesses have been searchingly cross-examined by the defence counsel at the trial but their evidence could not be dislodged. The appellant had motive to commit the murder of the deceased as the deceased had broken the engagement with his sister which had lasted for eleven months. The fact that the deceased had given successive blows and had caused as many as 13 injuries on the body of the deceased and the some of the injuries which were inflicted on the vital parts of the body of the deceased were sufficient in the ordinary course of nature to cause death, shows that the appellant had intention and knowledge to commit murder of the deceased. The appellant had acted cruelly and had selected vital parts of the body of the deceased for infliction of the blows with the muddamal knife. In our view, the evidence of the eye-witnesses, which is corroborated by other evidence in the nature of report of the FSL, and recovery and discovery of muddamal knife from the possession of the appellant had proved beyond doubt that the appellant and the appellant alone had inflicted blows on the vital parts of the deceased which has caused his death. There cannot be any doubt that the appellant wanted to commit murder of the deceased by inflicting successive knife blows on the vital parts of his body. Therefore, the finding of the learned Additional Sessions Judge that the appellant had committed offence under Section 302 of the IPC deserves to be confirmed.

11. The submission of the learned counsel for the appellant that the prosecution had not explained the injuries on the body of the appellant and, therefore, the prosecution had tried to suppress the genesis of the occurrence, deserves to be rejected. The injury

certificate of the appellant was produced at Exh.12. The said certificate had shown that the appellant had sustained some minor invincible external injuries in the nature of abrasions which were possible during infliction of as many as 12 to 13 knife blows on the body of the deceased. Those injuries, which were noted in the certificate Exh.15, were of trivial nature and, in our opinion, the prosecution was not bound to explain the injuries sustained by the appellant during the course of infliction of knife blows on the deceased. The appellant had not sustained serious injuries which ought to have been explained by the prosecution and, therefore, we are not impressed by the submission of the learned counsel for the appellant that the prosecution had tried to suppress the genesis of the occurrence as it had not explained the injuries on the body of the appellant.

12. The alternative submission of the learned counsel for the appellant that, as the deceased had broken the engagement with the sister of the appellant, the appellant had as a result of grave and sudden provocation inflicted knife blows and, therefore, he has no intention to commit murder of the deceased, deserves to be rejected. The evidence, as discussed above, had proved that, after the deceased had gone to town Dhoraji to attend the marriage ceremony of his friend, the appellant had followed the deceased on his bi-cycle. There was no reason for the appellant to chase the deceased on a bi-cycle. With a view to take revenge, the appellant had got down from the bi-cycle, had taken out the muddamal knife from his pant and had given successive blows on the vital parts of the body of the deceased. This cannot be said to be an act as a result of grave and sudden provocation. In our view, the deceased had not given any cause for grave and sudden provocation to the appellant. Looking to the manner in which the incident had taken place, it cannot be said to have been taken place due to any grave and sudden provocation. The appellant had motive and with predetermined mind to commit the murder of the deceased as the deceased had broken the engagement with his sister and, therefore, it is not possible to hold that the incident had taken place as a result of grave and sudden provocation. In our view, all the ingredients of the offences under Section 302 of the IPC are established by the prosecution beyond reasonable doubt. Therefore, the conviction and sentence imposed on the appellant deserve to be confirmed.

13. For the foregoing reasons, we do not find any substance in the appeal. The appeal, therefore, fails

and is dismissed. The conviction of the appellant under Section 302 of the Indian Penal Code and sentence imposed on him to undergo R.I. for life and fine of Rs.1000 in default R.I. for six months, recorded by the learned Additional Sessions Judge, Gondal, in Sessions Case No.237 of 1993, by judgment and order dated August 16, 1994, are hereby confirmed. The muddamal be destroyed in terms of directions given in the impugned judgment and order.

(M.H. Kadri, J.)

(M.C.Patel, J.)

(swamy)